



Financial Services Act 2010

2010 CHAPTER 28

FSA's disciplinary powers

9 Suspending permission to carry on regulated activities etc

In Part 14 of the Financial Services and Markets Act 2000 (disciplinary measures), after section 206 insert—

“206A Suspending permission to carry on regulated activities etc

- (1) If the Authority considers that an authorised person has contravened a relevant requirement imposed on the person, it may—
 - (a) suspend, for such period as it considers appropriate, any permission which the person has to carry on a regulated activity; or
 - (b) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of a regulated activity by the person as it considers appropriate.
- (2) In subsection (1)—

“permission” means any permission that the authorised person has, whether given (or treated as given) by the Authority or conferred by any provision of this Act;

“relevant requirement” means a requirement imposed—

 - (a) by or under this Act; or
 - (b) by any directly applicable Community regulation made under the markets in financial instruments directive.
- (3) The period for which a suspension or restriction is to have effect may not exceed 12 months.
- (4) A suspension may relate only to the carrying on of an activity in specified circumstances.
- (5) A restriction may, in particular, be imposed so as to require the person concerned to take, or refrain from taking, specified action.

- (6) The Authority may—
 - (a) withdraw a suspension or restriction; or
 - (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (7) The power under this section may (but need not) be exercised so as to have effect in relation to all the regulated activities that the person concerned carries on.
- (8) Any one or more of the powers under—
 - (a) subsection (1)(a) and (b) of this section, and
 - (b) sections 205 and 206,
 may be exercised in relation to the same contravention.”

10 Removal of restriction on imposing a penalty and cancelling authorisation

In section 206 of the Financial Services and Markets Act 2000 (financial penalties), omit subsection (2) (which prevents the FSA from imposing a penalty under that section as well as withdrawing a person’s authorisation under section 33).

11 Performance of controlled function without approval

In the Financial Services and Markets Act 2000, after section 63 insert—

“Performance of controlled functions without approval

63A Power to impose penalties

- (1) If the Authority is satisfied that—
 - (a) a person (“P”) has at any time performed a controlled function without approval, and
 - (b) at that time P knew, or could reasonably be expected to have known, that P was performing a controlled function without approval,
 it may impose a penalty on P of such amount as it considers appropriate.
- (2) For the purposes of this section P performs a controlled function without approval at any time if at that time—
 - (a) P performs a controlled function under an arrangement entered into by an authorised person (“A”), or by a contractor of A, in relation to the carrying on by A of a regulated activity; and
 - (b) the performance by P of the function was not approved under section 59.
- (3) The Authority may not impose a penalty under this section after the end of the limitation period unless, before the end of that period, it has given a warning notice to the person concerned under section 63B(1).
- (4) “The limitation period” means the period of three years beginning with the first day on which the Authority knew that the person concerned had performed a controlled function without approval.

- (5) For this purpose the Authority is to be treated as knowing that a person has performed a controlled function without approval if it has information from which that can reasonably be inferred.
- (6) Any expression which is used both in this section and section 59 has the same meaning in this section as in that section.

63B Procedure and right to refer to Tribunal

- (1) If the Authority proposes to impose a penalty on a person under section 63A, it must give the person a warning notice.
- (2) A warning notice must state the amount of the penalty.
- (3) If the Authority decides to impose a penalty on a person under section 63A, it must give the person a decision notice.
- (4) A decision notice must state the amount of the penalty.
- (5) If the Authority decides to impose a penalty on a person under section 63A, the person may refer the matter to the Tribunal.

63C Statement of policy

- (1) The Authority must prepare and issue a statement of its policy with respect to—
 - (a) the imposition of penalties under section 63A; and
 - (b) the amount of penalties under that section.
- (2) The Authority's policy in determining whether a penalty should be imposed, and what the amount of a penalty should be, must include having regard to—
 - (a) the conduct of the person on whom the penalty is to be imposed;
 - (b) the extent to which the person could reasonably be expected to have known that a controlled function was performed without approval;
 - (c) the length of the period during which the person performed a controlled function without approval; and
 - (d) whether the person on whom the penalty is to be imposed is an individual.
- (3) The Authority's policy in determining whether a penalty should be imposed on a person must also include having regard to the appropriateness of taking action against the person instead of, or in addition to, taking action against an authorised person.
- (4) A statement issued under this section must include an indication of the circumstances in which the Authority would expect to be satisfied that a person could reasonably be expected to have known that the person was performing a controlled function without approval.
- (5) The Authority may at any time alter or replace a statement issued under this section.
- (6) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replaced statement.

- (7) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.
- (8) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (9) The Authority may charge a reasonable fee for providing a person with a copy of the statement.
- (10) In exercising, or deciding whether to exercise, its power under section 63A in the case of any particular person, the Authority must have regard to any statement of policy published under this section and in force at a time when the person concerned performed a controlled function without approval.

63D Statement of policy: procedure

- (1) Before issuing a statement under section 63C, the Authority must publish a draft of the proposed statement in the way appearing to the Authority to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the Authority within a specified time.
- (3) Before issuing the proposed statement, the Authority must have regard to any representations made to it in accordance with subsection (2).
- (4) If the Authority issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it in accordance with subsection (2); and
 - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1) in a way which is, in the opinion of the Authority, significant, the Authority must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The Authority may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1).
- (7) This section also applies to a proposal to alter or replace a statement.”

12 Approved persons guilty of misconduct

- (1) Section 66 of the Financial Services and Markets Act 2000 (performance of regulated activities: disciplinary powers) is amended as follows.
- (2) In subsection (3)—
 - (a) in the opening words, for “it may—” substitute “it may do one or more of the following—”, and
 - (b) after paragraph (a) (but before the “or” at the end of it) insert—
 - “(aa) suspend, for such period as it considers appropriate, any approval of the performance by him of any function to which the approval relates;

- (ab) impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance by him of any function to which any approval relates as it considers appropriate;”.

(3) After that subsection insert—

“(3A) The period for which a suspension or restriction is to have effect may not exceed two years.

(3B) A suspension or restriction may have effect in relation to part of a function.

(3C) A restriction may, in particular, be imposed so as to require any person to take, or refrain from taking, specified action.

(3D) The Authority may—

- (a) withdraw a suspension or restriction; or
- (b) vary a suspension or restriction so as to reduce the period for which it has effect or otherwise to limit its effect.”

(4) In subsection (4), for “two years” substitute “three years”.

13 Publication of decision notices

(1) Section 391 of the Financial Services and Markets Act 2000 (publication) is amended as follows.

(2) In subsection (1) (which prevents the FSA and the person to whom a warning or decision notice is given or copied from publishing the notice or any details concerning it), omit “or decision notice”.

(3) After that subsection insert—

“(1A) A person to whom a decision notice is given or copied may not publish the notice or any details concerning it unless the Authority has published the notice or those details.”

(4) In subsection (4) (duty of FSA to publish information about a final notice), before “final notice” insert “decision notice or”.